

CONTINENTAL FIRE INSURANCE COMPANY AND OTHERS.

MAY 24, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CARMACK, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 436.]

The Committee on Claims, to whom was referred the bill (S. 436) for the relief of the Continental Fire Insurance Company and others, having considered the same, submit the following report and recommend the passage of the bill:

Senate Report No. 1264, Fifty-fourth Congress, second session, fully sets forth the facts in the case, and is attached hereto as a part of this report.

The report is as follows:

The Committee on Claims, to whom was referred Senate bill 567, have carefully considered the same and report it back to the Senate with the recommendation that it do pass.

The committee find that the relief sought by this bill has heretofore been considered by committees of both Houses of Congress. The Ways and Means Committee of the Forty-eighth Congress recommended the passage of a bill similar to the one now being considered, and in the Forty-ninth Congress this committee reported H. R. 1628, for the relief of these claimants, and the bill was passed by the House and reported favorably by the Finance Committee of the Senate.

In the Fifty-third Congress this committee made a favorable report through Hon. N. N. Cox, of Tennessee (Report No. 1311, part 2, to accompany H. R. 649), which is identical with the accompanying bill, and the Senate Committee on Claims also reported the House bill favorably (Senate Report No. 891), and the House Committee on Claims this (Fifty-fourth) Congress (Report No. 391) reported favorably a similar bill. The facts are as follows:

1. That prior to 1870 the claimants had made investments in the bonds and stocks of certain other corporations.

2. That under the laws of 1862 and 1864 the internal-revenue tax of 5 per cent required was paid by the parent companies to the Government, but notwithstanding such payment claimants were required by officers of the internal revenue to again pay a 5 per cent tax on the same income, thus enforcing the payment of a 10 per cent tax instead of the 5 per cent required by law.

3. That said claimants, in accordance with the law and regulations in that regard, filed refunding claims for the repayment of said tax unlawfully exacted. These claims were rejected by Commissioner Douglass, and the claimants had no notice of their rejection, although it was the practice of the office to give notice of such rejection to claimants, and the time allowed by law within which to bring suit for the recovery of these taxes had expired long before the claimants had any knowledge of their rejection. Mr. Douglass retired from the office of Commissioner of Internal Revenue soon thereafter, and his successors have held that they have no authority, under the practice of the Department, to reopen such cases without authority from Congress.

Since the rejection of said claims by Commissioner Douglass the Internal-Revenue Office has taken up all other similar claims which were pending at the same time

and left unacted upon by Commissioner Douglass, and allowed them, the office adopting the law as construed by Judge Lowell in the case of the Merchants' Insurance Company v. McCartney, collector of Internal Revenue (United States circuit court, eastern district of Massachusetts, May term, 1870, reported in 1 Lowell, p. 447), and said claims so allowed have been paid, the Secretary of the Treasury approving the payment.

Your committee file herewith copies of letters of Hon. J. W. Douglass, the Commissioner who rejected these claims, and of Hon. Charles Chesley, the Solicitor of Internal Revenue at that time. (Originals filed in the Office of Internal Revenue.)

WASHINGTON, D. C., *January 12, 1895.*

DEAR SIRS: In reply to your inquiry in relation to my former action in the claims mentioned in House bill 649 of the present Congress, I desire to state as follows: I recollect the claims of the Continental Fire Insurance Company and other similar companies were before me as Commissioner of Internal Revenue for consideration in 1874. At this length of time my memory of all the facts is not very vivid, of course, but this I do say, that, if my rejection involved the double payment of the tax, then my action was wrong and ought to be corrected.

Mr. Charles Chesley was the Solicitor of Internal Revenue at the time, and was by all odds the best internal-revenue lawyer in the country, and he, if my memory is right, approved the allowance of the claims.

If in this rejection I violated Judge Lowell's opinion, then I was surely wrong, for the office always intended at least to obey and enforce in all kindred cases that decision, and I hope that the parties who suffered may have a remedy.

Very respectfully,

J. W. DOUGLASS.

Messrs. DAVIS AND EDWARDS.

WASHINGTON, D. C., *January 1, 1894.*

DEAR SIR: I am in receipt of your letter of the 30th ultimo, in which you ask a statement of my recollection of the circumstances attending the rejection of certain claims for the refunding of internal-revenue taxes. These claims were made by certain corporations. They were made in accordance with a decision of Judge Lowell, a judge of the United States court for the district of Massachusetts, in which it was held that taxes such as these were double taxation, and therefore illegal. That decision was acquiesced in by the Government. No appeal was taken and the judgment was paid. Other similar claims were allowed and paid without suit.

The particular claims to which your refer were pending in the office of the Commissioner of Internal Revenue during the incumbency of Hon. J. W. Douglass and while I was Solicitor. I thought they should be allowed. I still think they should have been. I have recommended the allowance of similar claims, which have been allowed and paid. The Commissioner held a different view and directed a rejection, and I made an indorsement upon them to that effect.

Hastily and respectfully, yours,

CHARLES CHESLEY.

THEO. E. DAVIS, Esq., *Washington, D. C.*

In a letter of the Commissioner of Internal Revenue, dated January 17, 1895, found in Senate Report No. 891 of the Fifty-third Congress, third session, appears the following:

"The Secretary of the Treasury, Mr. Sherman, in approving similar claims, used the following language:

"Upon full investigation of the facts in the case, the Department is of the opinion that the assessments upon the dividends and interest above mentioned were erroneous, inasmuch as they doubled the tax on the same profits."

"The Commissioner also adds:

"The aggregate amount of claims named in the resolution is \$34,104.18. The passage of the resolution would not be likely to affect the Treasury in a greater amount than that, and the probability is that when the claimants prove their claims the amount that they will be able to prove will be less than the above."

Your committee, therefore, are of the opinion that the double taxes collected from said claimants were illegal and should have been refunded, and that justice required that said claims should be reopened and reexamined by the Commissioner of Internal Revenue, so that he may allow such taxes as shall appear to have been paid by said claimants the second time upon the same identical income.

Your committee, therefore, ask leave to report the accompanying bill, and do recommend its passage.